IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No.	: 09/888,899
Appellant(s)	: BRUNING, Gert
Filed	: 25 June 2001
Title	: METHOD AND SYSTEM FOR SELLING LIGHTING SOLUTIONS
TC/A.U.	: 3629
Examiner	: BORISSOV, Igor N.
Atty. Docket	: US 010297

CERTIFICATE OF MAILING OR TRANSMISSION
I certify that this correspondence is being:
[✓] deposited with the U.S. Postal Service with sufficient postage as first-class mail in an envelope addressed to:
Board of Patent Appeals & Interferences
United States Patent & Trademark Off.
P.O. Box 1450
Alexandria, VA 22313-1450
[ ] transmitted by facsimile to the U.S. Patent and Trademark Office at 703-872-9318.
On: Dec. 8, 2005
By: John C Fox

APPELLANT'S APPEAL BRIEF

Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

BRIEF OF APPELLANT

This Brief of Appellant follows a Notice of Appeal, dated 13 October 2005, appealing the decision dated 18 July 2005, of the Examiner finally rejecting claims 1-13 of the application. All requisite fees set forth in 37 CFR 1.17(c) for this Brief are hereby authorized to be charged to Deposit Account No. 501,850.

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of all rights in and to the subject application, Koninklijke Philips Electronics, N.V. of The Netherlands.

RELATED APPEALS AND INTERFERENCES

To the best of the knowledge of the undersigned, no other appeals or interferences are known to Appellants, Appellants' legal representatives, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Original claims 1-13 remain in the application in their original, unamended form, and now stand finally rejected as set forth in the final Office Action dated 18 July 2005, and are the subject of this appeal.

STATUS OF AMENDMENTS

No amendments were made in response to the Final Office action. All amendments have been entered.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention relates to lighting systems. More particularly, the invention relates to a method for selling lighting solutions that includes the installation and maintenance of lighting systems geared towards the unique needs of an individual consumer or business. In addition, the method includes charging a fee for the production of light and the servicing of the lighting system. (page 1, lines 6-10)

In conventional lighting of a residence or business the consumer purchases and installs the light fixtures and light bulbs. Except for the occasional purchase of a replacement bulb or fixture the lighting of the individual residence or business remains the same as when the lighting fixture was first installed. This arrangement offers very little in the way of flexibility in the lighting of an individual space, home or business. Aside from the installation of a dimmer or brighter light bulb or a dimmer switch, the consumer has few options when trying to change the atmosphere in a room to suit a particular need. (page 1, lines 13-20)

It would be desirable therefore to have a lighting solutions system that is more flexible thereby allowing the consumer the ability to change the lighting to suit the current circumstance or desire. (page 1, lines 21-23)

It would also be desirable to provide a method of providing a light system whereby a lighting solution system is installed and maintained by a provider of lighting systems. The provider would install a lighting system that would suit the needs of the consumer and maintain the lighting system. The provider may then periodically bill the consumer for the

lighting system installed, the services provided and the total amount of light emitted from the lighting system. (page 1, lines 24-29)

One aspect of the invention provides a method for selling lighting solutions including installing a lighting system within a building, measuring the lumens generated from the lighting system and determining a fee based on the amount of lumens generated. (page 2, lines 3-6; claim 1) The lighting system may include at least one LED (page 2, lines 6 and 7; claims 2 and 6), and may also include a photosensor or photodiode to measure the lumens generated by the lighting system (page 2, lines 7 and 8; claims 3 and 7).

Additionally, an input device may be installed to allow customers control of the lighting system. (page 2, lines 9 and 10; claim 4)

Another aspect of the present invention includes measuring changes of the light spectrum generated by the lighting system and determining a fee based on these changes. (page 2, lines 11-13; claims 5 and 9)

This method may include an input device that allows customer control of the lighting system. (page 2, lines 13 and 13; claims 8 and 9)

The input device may also allow customer the ability to access and use preprogrammed patterns of light. The use of these preprogrammed patterns of light may be measured and a fee may be determined based on the use of the patterns of light. (page 2, lines 13-17; claim 13)

Another aspect of the invention provides a lighting solution system. Fig. 1 shows one embodiment of a lighting solution system 10 for use in building 50, including a lighting system 40, a light measuring device 46, a monitoring device 60

that is configured to collect data from the light measuring device 46, and a server 30 to collect data from the monitoring device 60 and to calculate the fee owed by the consumer for the use of the lighting solution system 10. (page 3, lines 1-30; page 4, lines 1-6; claim 10)

The consumer may affect the output of the light system 40 through an input device 70. (page 4, lines 7 and 8; claim 11)

The light measuring devices 46 may be configured to measure the lumen output of white light emitting light sources (Block 230). The light-measuring device may also be configured to measure the spectrum changes of light sources that change color (Block 330). (page 6, lines 2-7; claims 10 and 12)

Based on the data received by the server 30, a fee would be calculated for the use of the lighting system (Block 280, 370). The fee could be based on numerous factors, such as the total amount of lumens emitted from the light sources, the number of times the spectrum of light changed, and the number of times the user selected a preprogrammed pattern of light. (page 7, lines 1-7; claim 13)

GROUND(S) OF REJECTION TO BE REVIEWED ON APPEAL

The sole ground of rejection to be reviewed on appeal is:

Are claims 1-13 unpatentable under 35 USC 103(a) over Lys et al. (U.S. 6,211,626) (herein 'Lys') in view of Yablonowski et al. (U.S. 6,535,859) (herein 'Yablonowski')?

ARGUMENT

Claims 1-13 are finally rejected under 35 USC 103(a) as being unpatentable over Lys in view of Yablonowski.

Lys teaches a current control system for a lighting assembly, wherein each current controlled lighting unit is uniquely addressable and capable of receiving illumination color information on a computer lighting network. See col. 5, lines 45-51.

Lys discloses, with reference to Fig. 90B, a sensor module 2050, which may be, *inter alia*, a light meter for measuring the intensity of light reflected by the surface being illuminated. See col. 59, lines 8-12.

Lys claims a light module comprising, *inter alia*, a processor for controlling the amount of electrical current supplied to a plurality of light emitting diodes, in order to generate a color within the color spectrum. See claim 1.

However, as acknowledged by the Examiner, Lys does not teach or suggest that a customer's light usage fee could or should be based on lumens. Indeed, Lys mentions nothing with regard to customer usage fees of any kind.

Yablonowski teaches to measure power consumption of a facility before and after retrofitting a lighting system with a power saving device, and to charge a fee based on the power savings.

In contrast, Applicant's claim measuring lumens generated from the lighting system or changes of light spectrum generated by the lighting system, and determining a customer's light usage fee based on the lumens generated or the light spectrum changes, not the power savings.

The Examiner has contended that it would have been obvious to modify Lys to include determining a customer's usage

fee based on power consumed, as disclosed by Yablonowski, because a business needs funds to operate.

However, Lys is not concerned with power savings, but only with current control of uniquely addressable lighting units in order to generate colors within the color spectrum. Moreover, Lys is not concerned with fees for the use of his system, or even the manner in which his system is marketed to an end user. Thus, there would be no motivation to modify Lys in view of Yablonowski in the manner suggested by the Examiner.

Moreover, the fact that businesses need funds to operate is irrelevant to a determination of obviousness in this case. In order for a combination of references to be effective under Section 103(a), there must be some teaching or suggestion contained within at least one of the references which would lead the skilled artisan to make the modification urged by the Examiner.

Neither Lys nor Yablonowski contain any teaching or suggestion that Lys' system could benefit from any of the power savings devices disclosed by Yablonowski. The mere fact that businesses need funds to operate is, while common knowledge, too general and vague to provide sufficient motivation.

Even if Yablonowski could be said to suggest that Lys should charge a customer for usage, this modification would not result in Applicant's claimed invention, since Yablonowski's usage fee is based on power savings, not on lumens generated or light spectrum changes, as claimed by Applicant.

Thus, even if Lys and Yablonowski were combined as suggested by the Examiner, the resulting combination would actually lead the skilled artisan away from Applicant's claimed invention.

In response to Applicant's argument that Lys fails to disclose charging a customer a usage fee, the Examiner has stated that the term 'customer' indicates the buyer of a product or a service, thereby suggesting the 'charging' step.

However, Lys fails to disclose anything regarding a customer, a buyer of a product or service, or charging a customer.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner has stated that both Lys and Yablonowski teach method and system for installing a lighting system for a customer.

This is not true with regard to Lys. Lys is silent with regard to any aspect of installing a lighting system for a customer.

The Examiner has further stated that the motivation to combine the references to include charging a customer a fee for services rendered would be to generate funds for businesses to operate.

However, Applicant is not reciting a general step of charging a fee for services rendered. Applicant is charging a fee which is based on lumens generated or changes in the lighting spectrum generated. This particular method of charging for services rendered is unique and is at the crux of Applicant's invention. Both Lys and Yablonowski utterly fail to teach or suggest such a unique method of charging for services rendered.

In response to Applicant's argument that Lys fails to teach installing a lighting system for a customer, the Examiner has cited col. 7, lines 1-4 of the reference, wherein it is stated that the manner of use of an LED unit includes placing it within an environment, and controlling the amount of current

to the unit so as to generate a color within the color spectrum.

However, placing an LED unit in an environment is not the same as installing a lighting system for a customer. An 'environment' could simply mean a bench in a laboratory.

Moreover, even if the combination of Lys and Yablonowski could be said to suggest installing a system for a customer, neither reference teaches or suggests charging the customer based on lumens or spectrum changes generated. In fact, Yablonowski teaches charging the customer based on power savings, and thus actually teaches away from Applicant's invention.

Argument with respect to claim 5

Regarding claim 5, the Examiner has argued that Lys teaches installing a lighting system for a customer, citing col. 7, lines 1-4 of the reference. However, this passage does not state that a lighting system is installed for a customer, nor, as already stated, are customer installations mentioned elsewhere in the reference.

Argument with respect to claims 5 and 10

Next, with regard to both claim 5 and claim 10, the Examiner has argued that by controlling the current to lighting units in a lighting system to achieve a desired color, Lys has established a 'straight correlation' between energy consumed and changes in light spectrum, referring to col. 6, lines 60-66 of Lys, wherein it is stated that a processor is provided for controlling the amount of current supplied to the LED system, so that a particular amount of current supplied thereto generates a corresponding color within the color spectrum.

This argument assumes that controlling the current is the same as measuring the energy consumed.

However, controlling the amount of current supplied is not the same as measuring the amount of energy consumed. The current is supplied to individual lighting units within a lighting system which includes a computer network. The power requirements of the network, as well as the inefficiencies in the lighting units and the line resistances would all contribute significantly to the amount of energy consumed in running the system.

Lys does not indicate that any measurements are made to determine the amount of energy consumed. He only controls the current to achieve a desired color, and does not keep track of the total energy consumed.

In response to Applicant's argument that Lys does not teach any correlation between the amount of energy consumed and changes in the light spectrum, the Examiner has responded that the distinction between the current supplied to an LED and the energy consumed by the system is not made in the claims. However, Applicant's argument was made in response to the Examiner's argument with respect to claims 5 and 10 that Lys does teach a correlation between energy consumed and changes in the light spectrum.

In fact, claim 5 calls for a method comprising the steps of: (a) installing a lighting system for a customer; (b) measuring changes of light spectrum generated by the lighting system; and (c) determining a customer's light usage fee based on the changes of light spectrum. Lys and Yablonowski, whether taken individually or in combination, fail to either teach or suggest these steps.

Claim 10 calls for a lighting solutions system comprising: means for measuring lumen output of a lighting system; and (b) means for determining a fee based on the lumen

output. Lys and Yablonowski, whether taken individually or in combination, fail to either teach or suggest such a system.

In summary, since Lys is concerned with current control of uniquely addressable lighting units in a computer lighting network, in order to generate colors within the color spectrum, and is not concerned with fees for the use of his system, or even the manner in which his system is marketed to the end user, there would be no motivation to modify Lys in view of Yablonowski in the manner suggested by the Examiner.

Neither Lys nor Yablonowski contain any teaching or suggestion that Lys' system could benefit from any of the power savings devices disclosed by Yablonowski. The mere fact that businesses need funds to operate is, while common knowledge, too general and vague to provide sufficient motivation.

Even if Yablonowski could be said to suggest that Lys should charge a customer for usage, this modification would not result in Applicant's claimed invention, since Yablonowski's usage fee is based on power savings, not on lumens generated or light spectrum changes, as claimed by Applicant.

Thus, the combination of Lys and Yablonowski actually leads the skilled artisan away from Applicant's claimed invention.

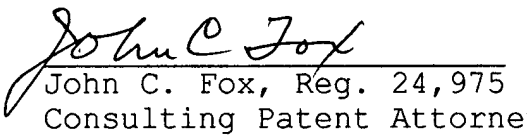
Accordingly, claims 1-13 are patentable under 35 USC 103(a) over Lys in view of Yablonowski, and the rejection is in error and should be reversed.

CONCLUSION

In view of the foregoing, Appellant respectfully requests that the Board reverse the rejection of record, and direct the Examiner to allow all of the pending claims, and to

otherwise find the application to be in condition for allowance.

Respectfully submitted,



John C. Fox, Reg. 24,975
Consulting Patent Attorney
203-329-6584

APPENDIX

CLAIMS ON APPEAL

1. A method for selling lighting solutions comprising:
installing a lighting system for a customer;
measuring lumens generated from the lighting system; and
determining a customers light usage fee based on the lumens.

2. The method of claim 1 wherein the lighting system comprises at least one LED.

3. The method of claim 1 wherein the measuring of the lumens generated by the lighting system comprises measuring the lumens by at least one photodiode.

4. The method of claim 1 further comprising:
installing an input device to allow customer control of the lighting system.

5. A method for selling lighting solutions comprising:
installing a lighting system for a customer;
measuring changes of light spectrum generated by the lighting system; and
determining a customers light usage fee based on the changes of light spectrum.

6. The method of claim 5 wherein the lighting system comprises at least one LED.

7. The method of claim 5 wherein the measuring of the changes of light spectrum generated by the lighting system comprises measuring the changes of light spectrum by a photodiode.

8. The method of claim 5 further comprising:

installing an input device to allow customer control of the lighting system.

9. The method of claim 1 further comprising:

measuring changes of light spectrum generated by the lighting system;

determining a customers light usage fee based on the changes of light spectrum; and

installing an input device to allow customer control of the lighting system.

10. A lighting solutions system comprising:

means for measuring lumen output of a lighting system; and

means for determining a fee based on the lumen output.

11. The lighting solutions system of claim 10 further comprising:

means to allow customer control of the lighting system.

12. The lighting solutions system of claim 11 further comprising:

means for measuring changes in spectrum of the lighting system; and

means for determining a fee based on changes in spectrum.

13. The lighting solutions system of claim 12 further comprising:

means for selecting a preprogrammed pattern of light to be emitted from the lighting system;

means for measuring the use of the preprogrammed patterns of light; and

means for determining a fee based on the use of the preprogrammed patterns of light.

EVIDENCE APPENDIX

(none)

RELATED PROCEEDINGS APPENDIX

(none)